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Supreme Court, U.S.
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No. 02-148

In The

Supreme Court of the United States

NARESH ARORA,

Petitioner,

v.

BOARD OF CIVIL SERVICE COMMISSIONERS;
CITY OF LOS ANGELES,

Respondents.

On Petition For A Writ Of Certiorari To The California Court Of Appeal, Second District, Third Division

REPLY BRIEF

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6 pp

REPLY TO BRIEF IN OPPOSITION

The Petition for writ of Certiorari ("Petition" or "Pet.") included four contentions explaining why the Petition should be granted. Out of four contentions, the respondents chose to rebut only one, stated on page 15 of the Petition. *See* Brief in Opposition of Respondents Board of Civil Service Commissioners, City of Los Angeles ("Opp'n") on pages 8-10.

For the remaining three contentions, the respondents deemed consented that the arguments are meritorious and therefore this court should consider granting the Petition. By virtue of not rebutting the contentions, the respondents impliedly conceded, in part, that no one ever properly served the accusatory pleading, and subsequently filed with the Board pursuant to (1) Personnel Department Policy 33.1F3 stated on Pet. at App. 41 and (2) Charter § 112(a) stated on Pet. at App. 41. This had resulted in invalid termination of petitioner. This is also proof that the Administrative Law Judge acted without jurisdiction, or in other words, acted under the doctrine of "hypothetical jurisdiction." As a result of which all the decisions, orders, and judgments at all levels of proceeding are null and void.

The respondents also impliedly conceded that Zna Houston ("Houston"), respondents' counsel of record in the court below, did not have the conformed copy of the accusatory pleading in her possession alleging full statement of the statutory disciplinary code violations, corresponding penalties and the facts leading up to petitioner's discharge. And yet Houston successfully misled the court below. If Houston were in possession of the conformed copy of the accusatory pleading, she would have made this a part of the Appendix of the Brief in Opposition.

For only one contention, stated at Pet. 15, in which the petitioner stated that the City did not afford him a *Skelly* hearing before his termination from employment, the respondents' counsels are now making a great stride to mislead this Court. *See* Opp'n at 8-10. Following is the detailed account of respondents' misleading and deceptive arguments:

1. *Opp'n at 8*: "The Opinion of the state court below . . . shows that Petitioner's termination was due to his being absent from the workplace . . . and that the court determined, pursuant to *state statutes and case decisions*, that at every step of the way Petitioner was afforded the opportunity to present his side." (Emphasis added.)

Without arguing the issues at this moment whether the California Courts complied with the state statutes and state case laws, it is imperative that the appellate court's decision should not conflict with this Court's relevant decisions and the laws of the United States. Failure to comply with the U.S. Constitution, federal statutes and laws, in rendering decisions by the state judges, leads to null and void results. *See* U.S. Constitution, article VI, § 2: the supreme Law of the Land. The state courts are not supposed to decide merely according to the laws or Constitution of the State, but according to the laws and treaties of the United States – "the supreme law of the land." *See Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat) 304, 335 (1816). State courts are bound to give effect to federal law when it is applicable, and to disregard state law when there is a conflict; federal law includes, of course, not only the Constitution and congressional enactments and treaties but also the interpretations of their meanings by the U.S. Supreme Court. *Cooper v. Aaron*, 358 U.S. 1, 17-18 (1958).

A detailed account had been presented in the Petition by citing innumerable violations of the U.S. Constitution, federal laws, statutes, and this Court's relevant decisions at all levels of the proceeding starting from the Board to the highest California State Court, where review could be had. Thus the respondents' argument carries no weight since the state courts below were mandated to follow "the supreme law of the land."

2. *Opp'n at 9*: "In this matter, the state appellate court determined that, pursuant to state decisional law, these [due process] requirements were met since Petitioner knew of the charges against him (by the previous letters [sic] [of May 29, 1998] from his Department). . . ."

Looking at the first part of the sentence, it appears that respondents want this Court to consider May 29, 1998 letter as a *Skelly* hearing notice. Respondents have included pertinent parts of the contents of the May 29, 1998 letter in the Brief in Opposition. *See* Opp'n at 3. Nowhere in the letter did John Federle ("Federle") state that he was proposing petitioner's discharge and providing any reason therefor. Federle did not include any copy of the charges and materials as no charges were leveled against petitioner in the letter. As such there was no opportunity offered, either orally or in writing, to refute or challenge. So, construing the May 29, 1998 letter as another *Skelly* hearing notice was a fatal decision made by the Court of Appeal. The May 29, 1998 letter did not comply with the Due Process Clause as outlined in *Board of Regents v. Roth*, 408 U.S. 564, 576-577 (1972). It is well established that there was only one *Skelly* notice mailed out, for a *Skelly* hearing on June 19, 1998, which was not received by petitioner in time to attend the *Skelly* hearing.

3. *Opp'n at 9*: "In this matter, the state appellate court determined that, pursuant to state decisional law, these requirements were met since Petitioner . . . had an opportunity to respond (he could have contacted the Department upon receipt of the notice [on June 20, 1998] and rescheduled the hearing)."

For the remaining portion of the sentence, respondents in a way reiterated and rephrased erroneous factual findings made by the Court of Appeal by stating that petitioner did not notify the City of late receipt of the *Skelly* hearing notice. *See* also Pet. at App. 37.

Contrary to what the respondents are trying to prove to this court, Petitioner's former counsel, Raj D. Roy (Roy), faxed a letter to the City attorney informing the late receipt of the *Skelly* hearing notice. *See* Pet. at 5. The message was transmitted at about 5:00 p.m. on June 23, 1998 and subsequently the receipt of the message by the City was confirmed over the phone. The same message was again transmitted at 9:01 p.m. on June 23, 1998 through fax with proper proof of service duly signed by a third party. These facts are all part of the records on pages

358-363, filed with the court below. Petitioner made this fact known to the court below by asserting in the "Statement of Facts" on pages 8-9 of the opening brief. The purpose to notify the City on June 23, 1998 was simply to request a *Skelly* hearing, because of defective and late receipt of the *Skelly* notice. The City failed to correct its own mistakes and did not care to respond. *See* Pet. at 5.

By raising the aforementioned argument, the respondents' counsels are pretending complete ignorance of the facts enumerated above, although the facts are and were known to them. This is once again a shear attempt to mislead this Court.

4. *Opp'n at 9-10*: "Further, the state court found that, pursuant to state decisional law, Petitioner, who had the opportunity to raise the issue of the untimeliness of the pre-termination notice at his administrative hearing, waived his due process right to an opportunity to be heard and present his side when he walked out of the administrative hearing without raising these issues. *See Mims v. Los Angeles Community Coll. Dist.*, 117 Cal.App.3d 352 (1981)."

In the opinion filed on February 28, 2002, the court below stated that the employee in *Mims* could have, but did not, raise the issue of the untimeliness of the pre-termination notice before the personnel commission that reviewed the decision to terminate. *See* Pet. at App. 38. Petitioner has reviewed the *Mims* case, and could not find this argument anywhere. Therefore, the court below erred citing the *Mims* case in reference to the point stated above. This also establishes that the respondents' argument is erroneous, and perhaps it is this reason why the respondents did not direct this Court's attention to the particular page of the *Mims* case.

Rules of the U.S. Supreme Court, Rule 15 (2) states in pertinent part that the brief in opposition should address the perceived misstatement of fact or law in the petition that bears on the issues properly before the Court if certiorari were to be granted. Nowhere in the rule does it state that respondents' counsel should deliberately and

intentionally mislead the highest Court in the nation. The respondents' counsel had an affirmative duty to conduct business uprightly and according to law. *See* Rules of the U.S. Supreme Court, Rule 5(4).

The complete argument advanced by the respondents rests on the opinion rendered by the California Court of Appeal. The opinion is, in fact, erroneous in substantial part. Furthermore, this part of the opinion referenced by the respondents was filed concurrently at the time of denying petitioner's petition for rehearing in the court below. Petitioner's due process rights were denied as he could not challenge or rebut the Court of Appeal's erroneous factual findings and conclusions of law. It is the duty of an attorney, a counselor of this Court, to strictly comply with the Rules of the U.S. Supreme Court, Rule 15(2), instead of rehashing the opinion of the court below in the Brief in Opposition. This Court should simply disregard the respondents' Brief in Opposition.

The Petition offers a novel issue, wherein the appellate court files an erroneous opinion, concurrently with an order of denying the petition for rehearing. This situation is likely to recur again in the future, and it is one of the reasons why petitioner wants the guidance of this Court to address this type of situation to prevent deprivation of due process rights of the party who might face the same situation as petitioner is facing now.

CONCLUSION

Predicated upon the above, petitioner respectfully requests this Court to disregard the Brief in Opposition and grant a writ of certiorari in this case.

Respectfully submitted,

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